IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Appeal No.732/2000 and
Criminal Revision No. 51/2001.

Date of Decision: 20th November, 2006.

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1. Criminal Appeal No.732/2000.

State of Himachal Pradesh. …. Appellant.
Versus
Mahesh Dutt @ Ramesh Kumar. Respondent.

2. Criminal Revision No.51/2001.

Mahesh Dutt @ Ramesh Kumar. Petitioner.
Versus
State of Himachal Pradesh. Respondent.

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The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[1]?
Criminal Appeal No.732/2000.

For the appellant: Mr. P.M. Negi, Dy. Advocate General.

For the respondent: Mr. Naveen Bhardwaj, Advocate, vice Mr. J.R. Poswal, Advocate.

Criminal Revision No.51/2001.

For the petitioner: Mr. Naveen Bhardwaj, Advocate, vice Mr. J.R. Poswal, Advocate.

For the respondent: Mr. P.M. Negi, Dy. Advocate General.

V.K. Gupta, C.J. (Oral).

By this common judgment, both the aforesaid Criminal Appeal as well as the Criminal Revision are being disposed of together.

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[1] Whether reporters of the Local Papers are allowed to see the Judgment?

An accident occurred on 8th August, 1993 at about 6.30 p.m. at Dharampur Padaw involving truck bearing registration No.HPA-4825. It is the case of the prosecution that in this accident injuries were caused to two persons and death occurred of Gurdyal Singh. The prosecution case in brief is that on the aforesaid date and time while accused Mahesh Dutt negligently and rashly drove his aforesaid truck, he caused injuries to Chanchal and Pinki etc. as also to Gurdyal Singh. Gurdyal Singh succumbed to his injuries, firstly being referred to District Hospital at Solan and later on on the way to Chandigarh while he was referred to PGI, Chandigarh. Various witnesses appeared in support of the prosecution case including PW-2 Ram Rattan, PW-3 Subhash Kumar and PW-5 Kumari Pinki. Actually the statements of PW-3 Subhash Kumar and PW-5 Kumari Pinki are very important because these two persons were eye witnesses to the occurrence of the accident and they have very clearly deposed that the accident occurred due to rash and negligent driving of the aforesaid truck by the accused Mahesh Dutt. PW-3 is the Mechanic in whose workshop the car bearing No.HNW-7000 was parked in which Pinki and Chanchal were sitting. This car had come to his workshop for some minor repairs. He has very

clearly deposed about the accident having taken place involving the accused Mahesh Dutt. Similar is the statement of Kumari Pinki PW-5 who has also deposed that it was the accused Mahesh Dutt who had caused the accident by hitting the car in which she along with Chanchal were sitting at the relevant time. PW-11 Kuldip Kumar of course was declared hostile but his testimony has not been believed by the learned Court below.

The learned trial Court convicted the accused for committing the offences punishable under Sections 279 and 337 of the Indian Penal Code but in so far as the offence alleged under Section 304-A of the Indian Penal Code is concerned, the accused was acquitted by the learned trial Court on the ground that no medical evidence with respect to the death of Gurdyal Singh was adduced during the course of the trial.

Against the aforesaid judgment of the learned trial Magistrate, the petitioner-accused filed appeal before the learned Sessions Judge being Criminal Appeal No.15-S/10 of 2000 which was dismissed by the learned Sessions Judge vide his judgment dated 26th February, 2001. Whereas Criminal Revision No.51 of 2001 is against the aforesaid judgment of the learned Sessions Judge upholding the accused-petitioner's conviction

under Sections 337 and 279 of the Indian Penal Code, Criminal Appeal No. 732 of 2000 has been filed by the State against the aforesaid judgment dated 17th July, 2000 passed by the learned trial Magistrate acquitting the respondent-accused of the offence under Section 304-A of the Indian Penal Code.

After hearing the learned counsel for the parties in the aforesaid two matters, first and foremost, I feel totally convinced and fully satisfied that as far as the evidence produced in the trial Court goes to suggest, the prosecution had succeeded in proving beyond any reasonable doubt that the accused indeed had driven the truck rashly and negligently and it is because of the aforesaid negligence and rashness that the accident had occurred, resulting in injuries to the above named persons. The accused actually in his statement under Section 313 of the Code of Criminal Procedure admitted about the factum of his driving the truck at the relevant time and also about the occurrence of the accident but pleaded a defence about his having to save another mishap by avoiding an alleged head-collusion with a bus coming from the opposite side. This version of the accused has not been accepted or believed either by the trial

Magistrate or by the learned Appeal Court and for good and valid reasons. The weight of the evidence in the case was very much in favour of the prosecution because the prosecution had succeeded in establishing the guilt of the accused beyond any reasonable doubt. There is no merit in the revision petition filed by the petitioner-accused.

Coming to the appeal filed by the State, it is noticed that the respondent in the appeal was acquitted of the charge under Section 304-A of the Indian Penal Code on the ground that the prosecution had failed to prove with the aid of medical evidence the factum of the death of Gurdyal Singh and that the death had been caused as a result of the aforesaid accident. Yes, there is a purported post-mortem report on the file of the trial Court but this post-mortem report neither was got proved by the prosecution nor was it admitted into evidence by the learned trial Magistrate. Additionally the prosecution did not produce any Doctor or any other medical witness to either prove the aforesaid post-mortem report or to establish the fact that Gurdyal Singh had died because of the aforesaid accident. One Doctor produced by the prosecution was PW-10 Dr. M.R. Lamba, who merely deposed about the

injuries having been received by Bhullar Chandel, Pinki and Paramjit Kaur and his having issued MLC with regard thereto. This witness did not say anything about the factum of the death of Gurdyal Singh or the reasons as to why the death was caused.

PW-8 Dr. Lalit Gupta, another Doctor was also examined by the prosecution. A very careful perusal of his statement recorded on 7th April, 1999 clearly shows that he stated merely about the injuries sustained by Gurdyal Singh when he was examined by him on 8th August, 1993. These injuries were recorded by him in MLC Ex.PW-8/A. I have seen this document in original from the trial Court file and find that it does contain a mention of the injuries sustained by Gurdyal Singh but that is about all as far as this document is concerned because it does not state or mention any fact about his death or the reasons or the causes as to why the death had occurred. Neither the aforesaid statement of PW-8 Dr. Lalit Gupta nor the aforesaid document Ex.PW-8/A can be a substitute to the mandatory requirement of law about the proof of the factum of the death of Gurdyal Singh as well as the reasons and causes of such death, including the

reasons and the causes that the death had occurred because of the aforesaid accident.

In my considered opinion, the learned trial Magistrate correctly acquitted the accused of the charge under Section 304-A of the Indian Penal Code on the aforesaid ground. No interference is called for.

In the result, both the appeal as well as revision petition are dismissed.

20th November, 2006. (V.K. Gupta), C.J.
(tr)